

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: Michael R. Levine

Serial No.: 09/812,639

Group Art Unit: 3626

Filing Date: March 20, 2001

Examiner: Vivek D. Koppikar

For: METHOD OF PAYMENT FOR A HEALTHCARE SERVICE

APPEAL BRIEF

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the final rejection of March 21, 2006, Applicant submits the following appeal brief.

1.0 Real Party in Interest.

The real party in interest in this case is Michael R. Levine, a U.S. citizen having a primary residence at 2122 N.W. 60th Circle, Boca Raton, Florida 33496.

2.0 Related Appeals and Interferences.

There are no related appeals or interferences.

3.0 Status of Claims.

The application was originally filed with eleven claims. Claims 1 and 4 were canceled and new claim 12 was added on November 11, 2004. Claims 2-3 and 5-12 are pending, finally rejected, and are the subject claims of this appeal. Claims 5, 9 and 12 are independent claims.

Claims 6-8 are dependent upon claim 5 or claims which are themselves dependent upon claim 5.

Claims 10 and 11 are dependent on claim 9 and claim 2 is dependent on claim 12.

4.0 Status of Amendments.

There were no amendments filed subsequent to the final rejection being appealed.

5.0 Summary of Claimed Subject Matter.

Claim 5, an independent claim, defines a method of payment for a healthcare service involving a healthcare user 12 (page 4, line 12; Figure 1), a healthcare provider 14 (page 4, line 12; Figure 1), and an intermediary 16 (page 4, line 12; Figure 1). The method involves establishing a contract between the healthcare provider and the intermediary to perform a predetermined healthcare service for a user and receive the predetermined fee (page 6, lines 6-8; item 110 in Figure 2). The method involves the step of contracting between the user and the intermediary for the user to pay the healthcare provider when the healthcare service is performed with a healthcare credit card issued by an intermediary (page 7, lines 6-13; item 130 in Figure 2). The user then receives the predetermined healthcare service from the provider (page 8, lines 8-9; item 150 in Figure 2) and the user charges the fee to the healthcare service using the healthcare credit card (page 8, lines 9-11; item 160 in Figure 2). Next, the intermediary pays the healthcare provider (page 8, line 12; item 170 in Figure 2). Finally, the healthcare user who receives the service pays the intermediary for the charged service fee (page 8, line 19 – page 9, line 1; item 190 in Figure 2).

Claim 6 is dependent upon claim 5 and adds to that claim the step of providing the healthcare user access to a website hosted by the intermediary on a computer network (page 5, lines 18-19) and adds the first step of identifying the healthcare user accessing the healthcare website (page 5, line 19 – page 6, line 2; item 140 in Figure 2). Claim 6 further adds the step of

the healthcare user selecting a healthcare provider from the contracting healthcare providers (page 8, lines 3-5; item 140 in Figure 2). Finally, the user selects a participating healthcare provider (page 8, lines 4-5).

Claim 7 is dependent upon claim 6 and defines the computer network as being the Internet (page 5, lines 4-10; item 22 in Figure 1). Claim 8 is dependent upon claim 5 and adds the step of billing the healthcare user by the intermediary for the healthcare service provided to the user after the intermediary pays the healthcare provider (page 8, line 19 – page 9, line 1; item 190 in Figure 2).

Claim 9 is an independent claim defining a method of payment for healthcare services comprising the steps of contracting between a healthcare provider and an intermediary for the provider to perform services for a user to receive a discounted fee for the services provided relative to fees charged others by the provider (page 6, lines 6-14). Next, the method comprises contracting between a user and the intermediary for the user to pay the healthcare provider with a healthcare credit card issued by the intermediary (page 7, lines 6-8). The remaining steps of claim 9 are similar to those of claim 5.

Claim 10 is dependent upon claim 9 and adds the limitation that the computer network on which the intermediary's website is hosted is the Internet, like the limitation of claim 7.

Claim 11 is dependent upon claim 9 and includes the limitation of the step of billing the user by the intermediary for the service performed by the provider after the step of paying the healthcare provider (items 170 and 180, Figure 2).

Claim 12 is an independent claim defining the method of paying for a healthcare service. It includes the steps of contracting by a user with an intermediary to establish an account for the user by which the intermediary will reimburse contracting third parties, including but not limited

to selected healthcare providers, for goods or services provided by such third parties to the user, such services including a limited schedule of healthcare services, the intermediary will bill the user for the goods or services, and the user will pay the intermediary for such billing (page 7, lines 6-13). Additionally, claim 12 involves the step of the intermediary providing a physical card to the user evidencing such account (item 130, Figure 2). The next step involves the financial intermediary contracting with a plurality of healthcare providers to provide a scheduled list of services to healthcare users at discounted rates relative to the rates charged others (page 6, lines 6-16; item 110 in Figure 2). The next step is the financial intermediary publishing a schedule of contracting healthcare providers to its contracting users (item 120 in Figure 2). The next step is a user presenting said physical card to a particular contracting provider (item 160 in Figure 2). The next step is the provider providing the service to the user and billing the intermediary for the service via a communication link at a discounted rate (item 180 in Figure 2). The next limitation of claim 12 is the financial intermediary paying the bill and subsequently billing the service to the healthcare user (items 170 and 180 in Figure 2) and, finally, the user paying the intermediary for such service (item 190 in Figure 2).

6.0 Grounds of Rejection to Be Reviewed on Appeal.

As set forth in the Office Action of March 21, 2006, claims 2-3 and 5-12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Volz, "Alternative care; Membership network offers uninsured a choice", *Modern Physician*, August 1999, p. 40 ("Volz") in view of Anonymous, "The issuers of health-care cards sense an era of healthy growth", *Credit Card News*, Chicago, IL, 6/15/1994, p. 5 ("HealthCare") and in further view of "Information available at the website of SimpleCare", presumably www.simplecare.com, although the date of the website is uncertain (hereafter "SimpleCare"), in further view of "M&T Bank NA launches its

5th cobranded credit card and 3rd supermarket card in 10 months”, Card Fax, Vol. 96, No. 27, p. 2, February 12, 1996, from Dialog File 9 (Business & Industry), Accession No. 00850421 Supplier No. 23426401 (“M&T”).

7.0 Argument.

As set forth in the grounds of rejection, the primary reference in the §103(a) combination on which the claims stand rejected is the Volz reference. Volz discloses a system in which a healthcare user may obtain membership in an entity which has negotiated discounted fees with a group of healthcare providers. Membership allows the healthcare user to apply to one of the participating healthcare providers for a discounted fee for a service. The healthcare provider then “estimates the total cost of services, including all physician visits and any necessary treatment or testing based on NAC’s discounted rates”. This quote is apparently provided directly to the healthcare user. If the healthcare user desires to obtain the quoted service from the healthcare provider, they must “... pay to NAC the full estimated amount two days prior to the service. NAC then takes its cut from that amount and reimburses the physician with the remainder within 30 days.”

This method is distinctly different from the present invention as claimed in a number of respects. Primarily from the healthcare user’s standpoint, with the NAC system (Volz) the healthcare user must fully pay for the services before they are performed. This payment is made to the intermediary who subsequently pays the healthcare provider. There is no “financing” of the services. Comparing the Volz method to the method defined by the present claims is like comparing a retail operator which sells, for example, automobiles for full payment, with another entity that sells the vehicles on a time payment plan through use of a financial intermediary such as a bank. If all automobiles sales in the United States were for cash, without a financing

intermediary, as defined in the claims of the present application, not very many cars would be sold.

Another difference between the present method, as claimed, and the method of Volz is the need to estimate the cost of the service and pay the full value of the estimate before the services are performed. This obviously imposes difficulty on both the healthcare provider in making an accurate estimate and the healthcare user who must overpay in the event the estimate turns out to be too high. In the method of the present invention after the service is performed, the cost of the service is billed to the financial intermediary who subsequently bills the healthcare user, who pays the bill according to the credit terms established under his account with the financial intermediary.

Another important difference between the method of the present invention, as claimed, and the method of Volz is that in the present invention the healthcare provider extends credit for the service provided to the healthcare user based on the commitment of the financial intermediary to pay for such service. No similar arrangement is involved with the method of Volz. The Examiner suggests that certain of these basic differences between Volz and the claimed method would be obvious to one of ordinary skill in the art at the time of the invention in view of HealthCare.

The HealthCare reference discloses a conventional credit card arrangement for use by HealthCare users in charging their healthcare costs, much like Visa or MasterCard. Unlike the present invention, as defined by the appealed claims, there appears to be no contract between the intermediary and the healthcare providers whereby the healthcare providers will charge users of the cards issued by the intermediary a discounted fee relative to the fees charged to others.

Moreover, Volz and HealthCare disclose two different third party payment arrangements which are totally incompatible with one another. The Examiner stated that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the limitations of HealthCare and the Volz system. Since the Volz system and the HealthCare system operate in completely different manners, it would not be a simple matter of incorporating the features of HealthCare and Volz, but rather producing a hybrid system containing the features of both and eliminating other features of both. Neither reference discloses a system like that defined in the present claims for charging a healthcare obligation on a credit card and receiving a discounted fee from the contracting providers. Since Volz and HealthCare operate in completely different and incompatible ways, there is no suggestion in the references of combining their features. The present claims define a healthcare system quite different from either Volz or HealthCare and provide advantages that neither provides. To suggest that it would be obvious to pick and choose elements from each is an exercise of hindsight in light of the present invention.

The Examiner recognizes that neither Volz nor HealthCare explicitly disclose the following features of the claims: 1) providing the healthcare user access to a website hosted by the intermediary on a computer network; 2) identifying the healthcare user accessing the healthcare website; 3) providing the identified healthcare user access to a web page containing healthcare providers contracting with the intermediary; and 4) selecting by the healthcare user a healthcare provider from the contracting healthcare providers. See page 4 of the Office Action of January 26, 2006. The Examiner argues that these deficiencies are overcome at least partially by the SimpleCare reference. From its website, SimpleCare appears to be a network of healthcare providers who have agreed to accept a discounted fee in exchange for full payment by

the healthcare user at the time of service. It does not appear that SimpleCare is an intermediary between healthcare users and healthcare providers in the sense that SimpleCare assumes responsibility to the provider for services provided to a user. SimpleCare does provide a website available to users listing healthcare providers who will accept a discounted immediate payment for certain services. Again, SimpleCare, like Volz and HealthCare, provides a service for healthcare users to deal with healthcare providers. SimpleCare provides a third, distinct alternative to the systems of Volz and HealthCare. To combine the features of SimpleCare along with selected features of Volz and HealthCare into a system as defined by the method of the present claims would be the very type of hindsight reconstruction using the teaching of an application, which would impermissibly undermine the test of obviousness set forth in 35 U.S.C. §103(a).

The Examiner further adds M&T to the combination of Volz, HealthCare and SimpleCare in order to render obvious the distinct method of providing and financing a healthcare service defined by the present claims.

The Examiner recognizes, at the last paragraph of page 2 of the March 21, 2006 Office Action, that the independent claims being appealed, 5, 9 and 12, essentially recite that a healthcare user charges goods or services, especially healthcare goods and services, and these services are offered to the user by the provider at a discount and by the user having the credit card they are able to charge the goods/services to the credit card and the credit card enables them to get the goods/services they are purchasing at a discount. The Examiner argues that this concept is taught by M&T. M&T appears to be a one-paragraph description of a credit card service that pays users a 2% reward on all purchases up to \$25,000. It makes no mention of the healthcare user receiving services from the provider at a discounted fee for the services relative

to fees charged by the healthcare provider to other parties as set forth in claims 5, 9 and 12 and their dependent claims.

The Examiner thus recognizes that even given the combination of HealthCare, SimpleCare and Volz, elements defined in each of the claims and central to the operation of the claimed method are lacking in the references. It is respectfully submitted that M&T does not fill that void in that it does not disclose a system wherein a healthcare user obtains services to be paid for by a healthcare intermediary at a fee which is discounted relative to the fees charged by the provider to other parties.

Summary

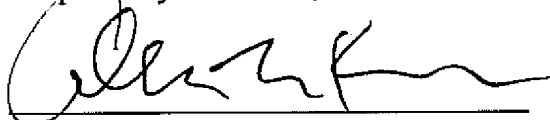
It is respectfully submitted that while both Volz and HealthCare disclose forms of systems which constitute methods of payment for healthcare services, like the claimed invention, they teach two systems which are clearly alternative to the system of the present invention and with features that could not be combined without totally altering the basic nature of those systems.

SimpleCare does not relate to the type of system in which an intermediary pays the healthcare provider for the services performed and simply provides a network in which member healthcare providers agree to provide services at standardized fees.

Moreover, it is respectfully submitted that M&T does not disclose a method which involves a user charging healthcare goods and services to a credit card and receiving discounts in the fees that the healthcare provider charges for these services, but rather simply a conventional credit card system wherein the user obtains a small reward from the card provider based on purchases.

The references collectively thus fail to disclose or suggest a motivation for combining selected features of each to arrive at the method defined by the present claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Allen M. Krass', written over a horizontal line.

Allen M. Krass
Registration No. 18,277
Gifford, Krass, Groh, Sprinkle,
Anderson & Citkowski, P.C.
2701 Troy Center Drive, Suite 330
P.O. Box 7021
Troy, MI 48007-7021
(248) 647-6000

Attorney for Applicant

AMK/gs

GS-\\Patlaw-sq\\npdas documents\\03LVN\\LVN-08602_03\\LVN-08602_03 - Appeal Brief.doc

CLAIMS APPENDIX

2. A method as set forth in claim 12 including the steps of:

providing the healthcare user access to a website hosted by the financial intermediary on a computer network;

identifying the healthcare user accessing the healthcare website;

providing the identified healthcare user access to a web page containing healthcare providers contracting with the intermediary; and

selecting by the healthcare user a healthcare provider from the contracting healthcare providers.

3. A method as set forth in claim 12 wherein the computer network is the Internet.

5. A method of payment for a healthcare service, said method comprising the steps of:

contracting between a healthcare provider and an intermediary for the healthcare provider to perform services for a healthcare user contracting with the intermediary and receive a fee for such services discounted relative to fees charged by the healthcare provider to other parties;

contracting between a healthcare user and the intermediary for the healthcare user to pay the healthcare provider when the healthcare service is performed with a healthcare credit card issued by the intermediary;

receiving by the healthcare user a healthcare service from the healthcare provider;

the healthcare user charging the discounted fee for the healthcare service using the healthcare credit card;

subsequently paying the healthcare provider by the intermediary according to the contract between the healthcare provider and the intermediary for the healthcare service charged to the healthcare credit card; and

subsequently paying the intermediary by the healthcare user according to the contract between the healthcare user and the intermediary.

6. A method as set forth in claim 5 including the steps of:

providing the healthcare user access to a website hosted by the intermediary on a computer network;

identifying the healthcare user accessing the healthcare website;

providing the identified healthcare user access to a web page containing healthcare providers contracting with the intermediary; and

selecting by the healthcare user a healthcare provider from the contracting healthcare providers.

7. A method as set forth in claim 6 wherein the computer network is the Internet.

8. A method as set forth in claim 5 including the step of billing the healthcare user by the intermediary for the healthcare service performed by the healthcare service provider, after said step of paying the healthcare provider.

9. A method of payment for a healthcare service, said method comprising the steps of:

- contracting between a healthcare provider and an intermediary for the healthcare provider to perform healthcare services for a healthcare user and receive a discounted fee for the services provided relative to fees charged others by the provider;
- contracting between a healthcare user and the intermediary for the healthcare user to pay the healthcare provider when the healthcare service is performed with a healthcare credit card issued by the intermediary;
- providing the healthcare user access to a web site hosted by the intermediary on a computer network;
- identifying the healthcare user accessing the healthcare website;
- providing the identified healthcare user access to a web page containing healthcare providers contracting with the intermediary;
- selecting by the healthcare user a healthcare provider from the contracting healthcare providers;
- receiving by the healthcare user the predetermined healthcare service from the selected healthcare provider;
- charging the fee for receiving the predetermined healthcare service using the healthcare credit card;
- subsequently paying the selected healthcare provider by the intermediary according to the contract between the healthcare provider and the intermediary for the healthcare service charged to the healthcare credit card; and

subsequently paying the intermediary by the healthcare user according to the contract between the healthcare user and the intermediary as payment for the healthcare service rendered by the selected healthcare provider.

10. A method as set forth in claim 9 wherein the computer network is the Internet.

11. A method as set forth in claim 9 including the step of billing the healthcare user by the intermediary for the healthcare service performed by the healthcare service provider, after said step of paying the healthcare provider.

12. A method of payment for a healthcare service, comprising the steps of:

contracting by a healthcare user with a financial intermediary to establish an account by which the intermediary will reimburse contracting third parties, including but not limited to selected healthcare providers, for goods or services provided by such third parties to the healthcare user, such services including a limited schedule of healthcare services, the financial intermediary will bill the healthcare user for such goods or services, and the healthcare user will pay the financial intermediary for such billing;

providing a physical card by the financial intermediary to the healthcare user evidencing such account;

the financial intermediary contracting with a plurality of healthcare providers to provide a scheduled list of services to contracting healthcare users at discounted rates relative to the rates charged others;

the financial intermediary publishing a schedule of contracting healthcare providers to its contracting healthcare users;

a particular healthcare user requiring a particular healthcare service on said scheduled list presenting said physical card to a particular contracting healthcare provider;

such particular healthcare provider providing the particular healthcare service to the particular healthcare user and subsequently billing the financial intermediary for the service via a communication link at the discounted rate;

the financial intermediary paying said billing by the particular healthcare provider and subsequently billing such service to the particular healthcare user; and

the particular healthcare user paying the financial intermediary for such service in accordance with the terms of their contract.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.